



STEVEN L. BESHEAR
GOVERNOR

LEONARD K. PETERS
SECRETARY

COMMONWEALTH OF KENTUCKY
ENERGY AND ENVIRONMENT CABINET

MINE SAFETY REVIEW COMMISSION
132 BRIGHTON PARK BLVD.
FRANKFORT, KENTUCKY 40601
TELEPHONE: (502) 573 - 0316
FAX: (502) 573-0344

COMMISSIONERS

BRYON ALAN THOMPSON

GENERAL COUNSEL

CHAIR
WILLIAM D. DONAN
JOE CHILDERS

**MINE SAFETY REVIEW COMMISSION
MINUTES**

MINUTES OF THE REGULAR MEETING OF **APRIL 9, 2009**: A MEETING OF THE MINE SAFETY REVIEW COMMISSION (HEREINAFTER "MSRC" OR "COMMISSION") WAS HELD IN THE CONFERENCE AND HEARING ROOM OF THE COMMISSION LOCATED AT 132 BRIGHTON PARK BLVD., FRANKFORT KY.

- ❑ **Members Present:** Acting Chair and Commissioner William D Donan and Commissioner Joe Childers were present. Also in attendance MSRC Hearing Officer and General Counsel Bryon Alan Thompson.
- ❑ The meeting was **called to order** at 9:00 a.m. EST
- ❑ **Declaration of a Quorum:** Upon the call of the meeting, Commissioner Donan made a motion that a quorum was present, which was seconded by Commissioner Childers. The motion carried unanimously, and was so Ordered.
- ❑ **Welcome Guests:** Hon. Mike Haines, Energy and Environment Cabinet General Counsel was present and also staff attorneys for OGC; Lentz, Thompson, Morrison, Geisler, Patrick and Richardson who were representing the Office of Mine Safety and Licensing. The Office of General Counsel was assisted by Kari Sutherland, Mary McCoy, Tara New.
- ❑ The **minutes** for the meeting on **3/12/09** were discussed. Commissioner Donan made a motion for approval, which was seconded by Commissioner Childers. The motion carried unanimously, and was so Ordered. Acting Chair Donan signed the minutes.

□ **OMSL Motions for Sanctions, Permanent or one (1) year Revocation for failure to comply with terms of the Settlement Agreement & Final Order by MSRC resolving KRS 351.120(12) workplace suspension for alcohol and substance abuse:**

- 08-MSRC-010 Cory J. Leason, was called. This respondent did not appear or participate and no one on their behalf filed any response. OMSL moved for **permanent revocation** based upon noncompliance with the required submittals, drug testing or evaluation terms of the Settlement Agreement incorporated as the Final Order of this Commission. This was found to be a violation of the Final Order. Commissioner Donan made a motion to **grant** the motion which was seconded by Commissioner Childers. The motion carried unanimously, and was so Ordered upon the signature of Donan.
- 07-MSRC-183 French P. Holbrook and 07-MSRC-216 Ronald Sizemore were called and each appeared and requested a hearing. OMSL based its motion for sanctions upon his apparent failure to submit drug tests. They demonstrated substantial compliance and they obtained tests and they were negative and thus OMSL moved to **withdraw** its motion for permanent revocation. That Motion was seconded as appropriate and approved unanimously.
- 08-MSRC-217 Brian Caldwell was called, whereupon OMSL moved to **continue** to the next meeting for good cause shown. This Motion was seconded as appropriate and approved unanimously.
- 07-MSRC- 093 Doyle E Gay and 07-MSRC-232 were called and they appeared to defend the OMSL motion for permanent revocation. Each claimed extenuating circumstances and requested an Amended Settlement Agreement that extended and enhanced the original terms of the **settlement**. OMSL agreed to settlement. Those Motions were seconded as appropriate and approved unanimously.

□ **KRS 351.120(12) Petitions heard regarding miner appeals of workplace suspension for alcohol and substance abuse – “simple” revocations:**

- The Commission discussed each in turn the procedurally similar KRS 351.120(12) appeals from suspensions for alcohol and substance abuse policy violations of 08-MSRC-273 Billy Carl Ingram, 09-MSRC-033 Nathan J. Draeger, 09-MSRC-050 Onzie Wayne Souder, 09-MSRC-051 Charlton E. Bennett, 09-MSRC-052 Stanley Baker Jr., 09-MSRC-054 Scott A. Day 09-MSRC-053 Jimmy D. Hamilton, 09-MSRC-062 James P. Hornsby

09-MSRC-064 Paul Sparkman, 09-MSRC-065 Christopher E Anderson, 09-MSRC-063 Eric A. Huff and 09-MSRC-068 Charles D Watts were called in turn. Each Petitioner appeared and requested a **Settlement Agreement** to resolve the allegations. Commissioner Childers made a motion to **grant**, each of their settlements which were seconded as appropriate. The motions carried unanimously, and were so Ordered. Chair Donan signed the Orders.

- The Commission called also the KRS 351.120(12) Petition for Appeal of 09-MSRC-055 Joshua G. Newsome, 09-MSRC-067 Brayant Lee Anglin and 09-MSRC-069 Frank Marion Childers none of these Petitioners appeared participated or defended upon the call of the hearing and did not request a continuance or other disposition prior to the hearing. Each were duly notified and scheduled for the hearing *they* requested for this meeting. **No one appeared** and they were Ordered to **Show Cause** as to why their certificates should not be revoked upon order at the next meeting. Commissioner Donan made the motion for Show Cause which was seconded by Commissioner Childers. The motions carried unanimously, and were so Ordered. Chair Donan signed the Orders.
- 08-MSRC-314 Rodney W. Baker and 09-MSRC-039 Eric Amburgy were set for a Show Cause and did not appear, participate or defend upon the call of the hearing and did not request a continuance or other disposition prior to the hearing. Therefore a motion for an Order to **Revoke** their certifications for not less than one year was made by OMSL. That motion was seconded appropriately. The motion carried unanimously, and was so Ordered. Chair Donan signed the Order.
- 08-MSRC-316 David L. Feltner, was called and OMSL requested a **continuance**. Commissioner Donan made the motion for Continuance which was seconded by Commissioner Childers. The motion carried unanimously, and was so Ordered. Chair Donan signed the Order.

The 11:00 a.m. Docket for KRS 351.120(12) workplace alcohol and substance abuse suspensions that were not appealed – “simple” revocations:

- The Commission called and then granted the motions by OMSL for **revocation** in the following procedurally similar cases. No one appeared on behalf of any Respondent miner and no Respondent appeared despite notice by certified mail with a return as to each; 09-MSRC-049 Donovan Shown, 09-MSRC-056 Darcy R. Collins, 09-MSRC-057 Tim Gillispie, 09-MSRC-058 William P. North, 09-MSRC-060 Gregory J. Hamilton and 09-MSRC-066 Jeremy K. Taylor. Commissioner Donan made a motion to **grant**, each of the OMSL Motion for Revocations which were seconded by Commissioner Childers. The motions carried unanimously, and were so Ordered. Chair Donan signed the Orders.
- The Commission discussed each in turn the procedurally similar KRS 351.120(12) suspensions for alcohol and substance abuse policy violations of 09-MSRC-059 Toy D Strong and 09-MSRC-061 Jerry L. Maynard which were called in turn. OMSL requested a **Continuance** to allow time to potentially resolve the allegations. Commissioner Childers made a motion to **grant**, which were seconded as appropriate. The motions carried unanimously, and were so Ordered. Chair Donan signed the Orders.

The 11:00 a.m. Docket for Motions to Reconsider:

- The Commission then called 08-MSRC-163 Jeremy Raschella and subsequently granted his request for a **continuance** to May 14 so that he could attend a child support hearing.
- The Commission then called, 08-MSRC-306 Donald J. Dye who stated he requested reconsideration from a prior Final Order because he were unable to complete the terms of the Settlement Agreement by facts and circumstances beyond his control and presented reasons why compliance can be attained. Commissioner Childers made a motion to **grant**, the Motion for Reconsideration and entry of an **Amended Settlement Agreement** which was seconded by Commissioner Donan. The motions carried unanimously, and were so Ordered.

The 11:00 a.m. Docket for “traditional” type cases:

- At the call of 08-MSRC-253 John Paul Biliter OMSL informed the Commission that a continuance would be appropriate because settlement discussions were underway and resolution by Settlement Agreement would be likely in the near future. So informed, that motion was seconded as appropriate and the Orders to **Continue** were granted by Commissioner Donan.
- 09-MSRC-042 Don Rowe was called and Attorney Boyd stated that a **Settlement Agreement** was ratified by OMSL and approval by MSRC was requested. So moved, the motion carried unanimously, and was so Ordered. Chair Donan signed the Order.
- **Petitions for an Order filed by OMSL in roof control cases:**

None were filed for this meeting.

Old Business

Ratification of Final Order:

None were filed for this meeting.

□ **Administrative Hearings Update;**

The Commission discussed briefly the continuing high number of cases set for the next meeting on Thursday May 14, 2009, and the possibility of one or more traditional type hearings.

□ **Status Report & Abeyances;**

None submitted for this meeting.

□ **Appeals**

- The Commission discussed the status of the appeal to Franklin Circuit Court of the Final Order in 04-MSRC-002 **Willie “Tick” Sizemore**, et al. and learned that it had been submitted for a decision in the **Court of Appeals**.

- The Commission discussed the status of the appeal to Franklin Circuit Court of the Final Order in 05-MSRC-004 **Simon Ratliff**, and was informed that Hon. Barbara Pauley is filing a **briefing schedule**.
- The Commission discussed the status of the appeal to Franklin Circuit Court of the Final Order in 07-MSRC-088 **Jerry J. Maggard**, et al. Hon. Smock, counsel for OMSL stated that they were **briefing** the matter.

New Business

□ **Office & Administrative;**

- The General Counsel advised that the **mileage** is reduced to thirty eight (38) cents per mile.

□ **Training**

- **Required Hearing Officer Training:** Newly appointed Commissioner Joe F Donan is obtaining his required 40 hour new miner training and his 13B specific training. The required annual training for compliance with the KRS 13B hearing officer statutory requirements for MSRC Commissioners is on Friday June 19, 2009.

- **Executive Session:** The Commission adjourned to conduct an Executive session to discuss the outcome of the cases heard as above and then reconvened to issue determinations.

□ **Probable Cause Determinations**

- The Commission then considered the following matters in regard to the issue of Probable Cause so that a finding could be made and a scheduling order issued; 09-MSRC-070 Andrew S. Brown & Jim E. Boyd filed by Hon. Richardson and 09-MSRC-071 Robert Salyer filed by Hon. Haines, were presented for a finding of **probable cause** and settlement at this meeting. After calling each in turn, a finding of probable cause was made.

□ **Settlement Agreements**

The Settlement Agreements were managed as indicated above in the Motions and suspensions sections.

□ **The Time Memo and Travel Vouchers** were signed and submitted for payment by the General Counsel.

□ **NEXT MEETING:** The Commissioners acknowledged that MSRC is regularly scheduled for a regular two day meeting on Starting on **Thursday May 14** 2009.

□ **Adjournment:** Commissioner Donan made a motion to adjourn, which was seconded by Commissioner Donan. The motion carried unanimously, and was so Ordered.

The next meeting of the Mine Safety Review Commission will be held on Thursday May 14, 2009. The meeting will be held in the conference and hearing room of the Commission located at 132 Brighton Park Blvd., Frankfort KY.

Approved:



Acting Chair William D. Donan
Mine Safety Review Commission

5/14/09
Date